

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

IN RE:) **CASE NO: 23-41539**
PHILLIP W COLBERT) **Chapter 13**
ASHLIE M COLBERT)
) **Trustee's Objection to Confirmation**
) **Original Confirmation Hearing set for:**
Debtors) **June 22, 2023 10:00 am**

TRUSTEE'S OBJECTION TO CONFIRMATION OF PLAN

COMES NOW Diana S. Daugherty, Standing Chapter 13 Trustee, and for her objection to confirmation states as follows:

1. The Rule 2016(b) statement conflicts with Statement of Financial Affairs question #16.
2. The plan pays attorney fees in excess of that owed per the 2016(b) form.
3. Debtor's attorney elects the flat fee, but the Rule 2016(b) form excludes services other than those provided in connection with appeals or adversary proceedings.
4. The plan does not represent Debtors' best efforts to repay creditors, 11 U.S.C. § 1325(b), in that:

Debtors are above median such that the 122C-2 determines how much the plan should guarantee to unsecured creditors. However, debtors' 122C-1 and 122C-2 contain errors such that debtors' guarantee to unsecured creditors is \$:99,240.00: A) On line 6 of their 122C-1, debtors fail to list the net income from their rental property, which is \$150.00 per their business income and expense statement and the mortgage payment to which debtors testified. B) On line 29, debtors claim a deduction of \$597.00 for education expenses for dependent children under 18 to attend private or public elementary or secondary school. However, debtors testified at the section 341 meeting that these expenses were actually contribution to a 529 fund for future college expenses and music lessons for their two sons. Further, the expenses for school must be documented and accompanied by a an explanation of why the amount is both reasonable and necessary. C) On line 33d, debtors claim a deduction of \$925 for the mortgage payment on their rental property. The mortgage for this property is paid through the plan and the expense should already be accounted for on line 6 of the 122C-1. Debtors' result for monthly disposable income on line 45 is negative \$18.00. Adding in \$150 from line 6 of the 122C-1, \$597.00 from line 29, and \$925.00 from line 33d equals \$1,654.00. Multiplied by 60, debtors must guarantee \$99,240.00 to their unsecured creditors. With the correct amount guaranteed, debtors' plan is approximately \$93,784 short of feasibility.
5. Debtors' plan paragraph 5 should provide that Mr. Colbert will provide the Trustee a pay advice showing the payment of his annual bonus and turnover half of the net bonus each year upon receipt.

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6. Debtors claim they are claiming a continuing contribution of \$540.00 to charity on their schedule J (\$544.00 on their CMI), but their 2022 tax return claims a cash gift to charity of \$2,159, which is only \$179.92 monthly. The Trustee request documentation of debtors' continuing charitable contributions.

WHEREFORE the Trustee prays the Court enter its order denying confirmation of the proposed plan.

Dated: May 25, 2023

OBJCONF--KR

/s/ Kathy Reichbach

Kathy Reichbach MO56957

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on May 25, 2023, with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court's CM/ECF System as listed on the Court's Electronic Mail Notice List.

I certify that a true and correct copy of the foregoing document was filed electronically with the United States Bankruptcy Court, and has been served by Regular United States Mail Service, first class, postage fully pre-paid, addressed to those parties listed on the Court's Manual Notice List and listed below on May 25, 2023.

PHILLIP W COLBERT
ASHLIE M COLBERT
9380 GOLDEN GATE RD
SAINT LOUIS, MO 63144

/s/ Kathy Reichbach

Kathy Reichbach MO56957